IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1157 of 2005
In SPECIAL CIVIL APPLICATION No. 16696 of 2003
To
LETTERS PATENT APPEAL No. 1167 of 2005
With
LETTERS PATENT APPEAL No. 1173 of 2005
In SPECIAL CIVIL APPLICATION No. 5200 of 2004
To
LETTERS PATENT APPEAL No. 1175 of 2005
In SPECIAL CIVIL APPLICATION No. 5201 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE M.C.PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BABASHANKAR AMBALAL RAVAL - Appellant(s)

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION - Respondent(s)

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Appearance :
MR PANKAJ K SONI for Appellant(s) : 1,
MR HARDIK C RAWAL for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE B.J.SHETHNA
and
HONOURABLE MR.JUSTICE M.C.PATEL

Date : 13/09/2005

COMMON ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE B.J.SHETHNA)

Admit. Learned counsel Shri Hardik Rawal, who appeared before the learned Single Judge in the writ petitions, is directed to accept notice for the respondent - Corporation in all these appeals. At the joint request of the learned counsel for the parties, all these matters are taken up today for final disposal and disposed of by this common order.

2. Whether statutory liability is attracted for payment of gratuity as per Section 4(2) of Payment of Gratuity Act, 1972 on account of subsequent revision of pay scale after the date of retirement or not? was the main question before the learned Single Judge in the writ petitions filed by the respondent Corporation.

2.1 The second question was what should be the consequential order in view of subsequent change in the circumstances from the date of filing of the application before the Controlling Authority under the Act till the pendency of this petition, more particularly when the same relates to retiral benefits of the employees.

3. The learned Single Judge (Jayant Patel, J.) of this court, after having heard the learned counsel for the

parties, allowed all the writ petitions filed by the respondent Corporation and set aside the impugned orders passed by the controlling authority as well as the appellate authority in favour of the employees. However, it was directed that the employees be permitted to withdraw the principal amount as payment of gratuity and the amount of interest, out of the amount deposited by the Corporation, shall have to be refunded to the Corporation by the Controlling Authority. This is challenged in all these appeals by some of the respondents – employees.

4. It is stated at the bar by the learned counsel for the parties that the present appellants – employees have already withdrawn the amount of gratuity. Therefore, the only question which remains to be decided is regarding interest. It was brought to our notice by learned counsel Shri Rawal appearing for the respondent Corporation that learned counsel for the appellants – employees appeared before the learned Single Judge in the writ petitions and made the statement that if the concerned employees were paid the principal amount at the time by permitting withdrawal of the gratuity amount, then they may not press for the interest, as ordered by

the authorities under the Act. In view of this, Mr. Rawal submitted that having withdrawn the principal amount of gratuity, it is not open to them to claim interest on it after making the statement before the learned Single Judge while allowing the writ petitions filed by the Corporation. However, learned counsel Shri Soni for the appellants – employees in all these appeals submitted that after the learned Single Judge of this court passed an order on 11th February, 2004 in all the writ petitions, recently i.e. On 29th August, 2005, the Controlling Authority has passed the order dated 29th August, 2005 paying interest on the gratuity amount to the employees. If it is so, then we are of the considered opinion that irrespective of the order passed by the learned Single Judge of this court on 11th February, 2004 in all the writ petitions, if the present appellants – employees make proper representation to the concerned authority, then we are sure that the concerned authority may consider such representation and decide the same in accordance with law as early as possible. If such a representation is made within one month from today, then the same may be considered and decided by the concerned authority as early as possible, preferably within two months from the date of receipt of the same.

With these observations, all these appeals are disposed of. Direct Service permitted.

(B.J. Shethna, J.)

(M.C. Patel, J.)

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